

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 569 of 1998

in

SPECIAL CIVIL APPLICATION No 4618 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-Yes 2 to 5 - No.
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REGIONAL TRANSPORT OFFICE

Versus

VH SHAH

Appearance:

Mr.M.A.Bukhari, Asstt. GOVERNMENT PLEADER for Appellants
MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/12/98

CAV JUDGEMENT (PER C.K.THAKKER J.)

This appeal is filed by the State of Gujarat and
another against the judgment and order of the learned

Single Judge in Special Civil Application No.4618/97 dt. February 20, 1998.

Respondent is the original petitioner. He filed the above petition for an appropriate writ, direction and/or order directing respondent no.1 - Regional Transport Officer ("RTO") Kheda at Nadiad to issue no objection certificate ("NOC" for short) without insisting upon the petitioner to pay composition fee for the cases said to have been filed wherein the petitioner was not accused. Pending hearing and final disposal of the petition, a prayer was also made against respondent no.1 to issue "NOC" without insisting upon the petitioner to pay composition fee. In the alternative, a direction was sought against respondent no.1 to issue NOC by depositing requisite amount by way of security.

The case of the petitioner was that he was engaged in financing purchase of motor vehicles (three wheelers). Vehicles were purchased with the finance made available by the petitioner and then hired out to others. Accordingly, the petitioner was shown as owner of the vehicle in the Registration Book issued by RTO. The petitioner wanted to transfer certain vehicles registered in his name but the first respondent was not prepared to transfer those vehicles on the ground that certain non-cognizable complaints were filed and were pending against the drivers of the vehicles i.e. Rickshaw drivers and respondent no.1 insisted the petitioner to get those non-cognizable complaints compounded and only in that event he would issue NOC. As the petitioner was of the view that the objection raised by respondent no.1 was illegal, he requested the respondent no.1 not to insist on the offences being compounded by the petitioner when he was not shown as an accused in those cases and offences were of technical nature. The first respondent, however, refused to oblige the petitioner and the petitioner was, therefore, constrained to approach this court by filing the above petition.

It was argued before the learned Single Judge on behalf of the petitioner that once legal formalities as laid down under the Motor Vehicles Act, 1988, and Rules framed thereunder have been complied with it was obligatory on the part of the first respondent to permit transfer of the vehicle by issuing 'no objection certificate, it was not open to the first respondent to refuse NOC on the ground that certain non-cognizable complaints were filed against the drivers of auto rickshaws. It was also contended that in those complaints, the petitioner was not shown as accused and

violation was alleged only against drivers of the Auto Rickshaws. Moreover, the complaints were in the nature of non-cognizable offences, such as wrong parking and similar other technical breaches. Respondent no.1 had no authority to insist compounding of offences by the petitioner. Such action was, therefore, illegal and contrary to law.

At the time of hearing of the petition, voluntarily a statement was made by the learned counsel for the petitioner that the petitioner would deposit with the first respondent an amount of Rs.200/- for each complaint of non-cognizable offence with which the drivers were charged without going into wider question whether RTO could withhold transfer of Vehicle on that ground.

The learned Single Judge, in the light of the statement, allowed the petition by directing the respondent no.1 to consider the petitioner's request for transfer of registration of a motor vehicle in case where the concerned driver was involved in non-cognizable offences under the Motor Vehicles Act, 1988 or Rules framed thereunder. The learned Single Judge also observed that an amount of Rs.200/- shall be treated as deposit towards fine that might be imposed in future.

In para 6, the learned Single Judge observed thus:

"6. It is clarified that this order shall not be construed as direction to accept the application for transfer of registration of vehicles in case where the vehicles are involved in serious offences like the offences under the Indian Forest Act, 1927, Conservation of Forests Act, 1980 Bombay Prohibition Act, 1949 and such other legislations."

The appeal was admitted by the Division Bench on July 28, 1998 and notice of admission was made returnable on August 16, 1998. On 17th August 1998, we fixed final hearing of the Letters Patent Appeal. The matter was thereafter finally heard.

Mr. Bukhari, learned Assistant Government Pleader contended that the learned Single Judge has committed an error of law in giving direction to issue "no objection certificate" in favour of the petitioners. He submitted that when cases were pending against drivers of the Auto

Rickshaws, it was open to the first respondent to insist upon the composition of offences and in absence of such composition, respondent no.1 was within his authority in refusing "no objection certificate". Such an action could not be said to be contrary to law and by giving direction to issue NOC, learned Single Judge has exceeded his jurisdiction and the order is liable to be interfered with.

Mr.Parikh, learned counsel for the petitioners, on the other hand, supported the judgment of the learned Single Judge. He submitted that in none of the cases, petitioners were shown to be accused. Moreover, all the complaints were of a trivial nature against drivers and they were non-cognizable complaints. Fine which is prescribed by the Act and Rules, ranges from Rs.100/- to Rs.600/-. He also submitted that under the provisions of Section 50 of the Motor Vehicles Act, 1988, once necessary formalities have been complied with, it was incumbent on the part of the Registering Authority to transfer a vehicle and the respondent no.1 could not have refused to grant such certificate. For that purpose reliance was placed on certain decisions also.

Mr.Parikh submitted that even without payment of any amount by the petitioner, first respondent was duty bound to permit transfer of Motor Vehicle, but it was the petitioner who voluntarily made a statement that he was prepared to deposit an amount of Rs.200/- towards the fine which might be imposed on driver in future. Such amount was towards deposit and as and when final order would be passed, the authorities could take appropriate proceedings in accordance with the said order. Finally, Mr.Parikh submitted that the learned Single Judge has taken due care in seeing that the said order does not apply to serious offences by clarifying that the order would apply only to non-cognizable complaints filed under the provisions of the Motor Vehicles Act and the Rules made thereunder and not to other laws.

In the facts and circumstances of the case, we are of the view that no ground has been made out by the appellants to interfere with the order passed by the learned Single Judge and the order cannot be said to be illegal or unlawful.

It is asserted by the petitioner and not controverted by the authorities that the petitioner is merely carrying on business of Auto Finance and vehicles were purchased with the finance made available by him. Auto rickshaws are in possession of other persons.

Against drivers, certain non-cognizable complaints were filed which are pending in which the petitioners were not shown as accused. Again, the complaints were in respect of "non-cognizable" offences and they are technical in nature. The learned Single Judge, in our opinion, rightly considered all the aspects and on the basis of the statement made on behalf of the petitioner that he would deposit the amount of Rs.200/in respect of each and every case as deposit towards fine that may be imposed in those cases passed the order impugned in LPA. By giving such direction, the learned Single Judge has taken care of interest of the authorities also by clarifying that such amount would be towards deposit and it would be subject to final outcome of the proceedings in those cases. Moreover, the said order would not apply to serious offences such an offence under the Indian Forest Act, 1927, Conservation of Forests Act, 1990; Bombay Prohibition Act, 1949, Essential Commodities Act, 1955 and such other legislations.

In our opinion, Mr.Parikh is right that once necessary formalities have been complied with it was the duty of the Registering Authority to permit transfer of the vehicle. In Santakumari v. R.T.O. and Registering Authority,Kozhikode, AIR 1976 Kerala 17, and in Nanaiah vs. The Regional TransportOfficer,Coorg Region, Mercara, AIR Karnataka 106, similar view is taken.

For all these reasons, we are of the view that no interference is called for and the appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

Dt. .11.1998. (C.K.THAKKER J.)

(A.M.KAPADIA J.)